

## **ADVISORY COMMITTEE MINUTES**

**August 29, 2006**

### **Members Present:**

Bob Shosted  
Dave Gribskov  
Steve Millard  
Max Sheils  
Dave Whaley  
Senator Andreason  
James Arnold

Glenna Christensen  
Steve Haase  
Linda Sams  
Rian Van Leuven  
Tracy Whigam  
John Greenfield  
Rod Fuger

### **Members Absent:**

Representative Garrett

Chairman Bob Shosted called the meeting to order and asked for introductions of members and public attendees.

### **Minutes:**

The Minutes of May 9, 2006, were approved as written.

### **Uninsured Employers Fund:**

Subcommittee Chair John Greenfield reported that establishing an Uninsured Employers' Fund (UEF) is turning out to be more difficult than originally thought. Mr. Greenfield and Jack Barrett plan to contact Keith Messmer, Bureau Chief of the Montana Workers' Compensation Regulation Bureau, to discuss how Montana established its Uninsured Employers' Fund, as the state of Montana has similar characteristics to Idaho. Montana's UEF is funded by penalties only, and Mr. Greenfield indicated that this type of funding alone could be dangerous because a large medical claim could deplete the funds and result in possible bankruptcy. Mr. Greenfield reported that Mr. Messmer sent extensive materials to assist the subcommittee and he will copy and distribute that information very soon. Mr. Greenfield stated that he would schedule a meeting with the subcommittee members to conference call Mr. Messmer to answer any questions the subcommittee may have. Mr. Greenfield will provide an update at the next Advisory Committee meeting.

### **Kids Chance Program**

Jack Barrett reported that he has drafted a set of by-laws for the Kids Chance Program that is being reviewed by other attorneys in his firm. Mr. Barrett plans to meet with a Certified Public Accountant in regards to setting up the account for the Kids Chance Program fund. Once that is completed, Mr. Barrett will contact sureties, claimant and defense attorneys and rehabilitation personnel to sit on the board of the Kids Chance Program.

## **Consideration of Issues:**

### Notification Requirements of Idaho Code §72-713

Max Sheils reported that since 1971 Idaho Code §72-713 requires the Industrial Commission to give notice of hearings either by personal service or by registered or certified mail. Adjudication Manager Alan Conilogue reported on the annual cost to the Commission for registered and certified mailings that continue to increase. It was reported that the District Court, Supreme Court and Idaho Commerce and Labor do not use registered or certified mail for their notices, but rather use regular mail. Discussion was held and the Advisory Committee agreed to form a subcommittee for the purpose of determining if there is a need to draft changes to §72-713 allowing notices to be sent by regular mail and to determine if it is necessary to retain registered and certified mailings for pro se claimants.

Subcommittee members consist of Max Sheils Chairman, Linda Sams, David Whaley, David Gribkov, Glenna Christensen, James Arnold, and Alan Conilogue (ex-officio).

### Legislator Educational Topics

Chairman Bob Shosted reported that at the Advisory Committee's last meeting Representative Kathie Garrett suggested that presentations to the legislature on the role of the Industrial Commission be done early in the session. Senator Andreason stated that Mr. Barrett's presentation on workers' compensation that he is usually asked to give annually is very well received by legislators. The Senator suggested that both the House and Senate germane committees be invited to the Industrial Commission for a presentation. It was decided that the new Chairman of the Advisory Committee should make the invitation.

### Idaho State Bar Seminar Speaker

Max Sheils announced that he was asked to speak at the Idaho State Bar on the role of the Industrial Commissions' Advisory Committee. Mr. Sheils asked if there were any objections to his speaking on that topic. There were none.

### New Lobbyist Registration Law

Deputy Attorney General David Young spoke to the Advisory Committee on the new lobbyist registration law that became effective July 1, 2006. Mr. Young explained that the changes now include lobbyist registration for any person attempting to contact or causing others to make contact with an executive official to influence legislation or administrative actions for compensation at the state level. The new law specifically includes the definition of an executive official and the executive or chief administrative officer of the Industrial Commission. Discussion was held in length about different situations that might require a person be asked about being a registered lobbyist and the reporting of such activity.

### Security Issues and Ex Parte Communications

Chairman Shosted discussed the issue of security requests made to the Commission for hearings for the safety of the Commissioners and other parties involved. Mr. Shosted feels that a recent request by a surety for security at a hearing was not adequately acted upon. Mr. Shosted stated that when a surety red-flags an individual due to suggested violence, the Commission should respond to the surety's request. David Whaley suggested that sureties concerned about safety should schedule their own security, and that it may not always be the Industrial Commission's responsibility. Director Mindy Montgomery stated that she and the Commissioner's met and agreed on a procedure to eliminate involvement of the adjudication staff to prevent ex-parte communication. The Commission's procedure for future security requests require that all security issues be requested in writing to the Director and include the reasons for requesting security measures. The Commission hopes this will alleviate the communication problems encountered in the past.

### Idaho Code §72-409, Calculation of Income Benefits for Part-Time Employees

Glenna Christensen discussed the unintended result of Idaho Code §72-409 in the workers' compensation law that allows a person working a few hours a week making a low wage who gets injured on the job, to make more money drawing temporary disability benefits at the minimum of fifteen percent (15%) of the average state wage than if the person was working. Ms. Christensen stated that she discussed this problem with several adjusters and sureties and although they indicated it is not a large problem, asked the members if this is an area of concern that should be considered for change. Jack Barrett and Dave Gribskov discussed the reasons behind the statute that was intended to assist migrant workers. Steve Haase reported that this situation is very infrequent. Rod Fuger and Commissioner Maynard both stated that many times employees in this situation are in transition working part-time until full time employment is re-obtained. When they get injured at their part-time employment, it prevents them from obtaining a full time job. After further discussion, no action was taken at this time.+++++

### Advisory Committee Election

Chairman Shosted moved that since there was only one nominee for each position, the Committee approve all the nominees on the ballot. The Committee members approved the following members by consensus:

Representative of Workers – Dave Whaley, Idaho AFL-CIO  
Representative of Employers – Kriste Crane, MSN, RN, Micron Technology  
Representative of the Insurance Industry – Dave Gribskov, Liberty NW Insurance  
Representative of Medical Providers – Steve Millard, Idaho Hospital Assn.  
Chairman – Rian Van Leuven, PACE #608

Commissioner Kile inquired about the lack of interest from the public for nominees to fill positions that expire. Nominations subcommittee Chair Max Sheils responded that a few

people had been contacted, but were not interested at this time. Chairman Shosted suggested the Advisory Committee revise its charter to include term limits for members of the Committee to allow more individuals the opportunity to participate. Steve Haase suggested the Commission announce at its annual seminar the need for nominees and ask attendees to submit their bios to the Commission if they are interested. Glenna Christensen suggested that when members attend outside meetings to spread interest in becoming a member of the Advisory Committee. Steve Millard suggested changing the charter to add a physician representative to the committee as hospitals and physician interests are quite different. It was also suggested that the nominating subcommittee should submit names directly to the Commissioners for appointment rather than by vote of the existing members. The nominating subcommittee will discuss the issue and Mr. Sheils will report back at the next meeting.

### **Other Issues:**

#### **Industrial Commission Report**

Adjudication Manager Alan Conilogue reported on the status of the medical fee rules. He indicated that a lot of interest has been generated from the temporary rule currently in place other than the schedule of CPT code reimbursements. The Commission is getting requests through dispute resolutions to deal with a number of other issues regarding medical fee reimbursement for hospitals, pharmacies, and ambulatory surgical centers. Mr. Conilogue reported on some of the significant changes that have been made to the new proposed rule, such as a percentage payment for large and small hospitals, a reduction of CPT code groupings from 35 to 13 that could be reduced further. The conversion factors have been set to maintain as closely as possible an overall revenue neutrality for the first year and make adjustments in the years to come. The other change is in order to fully compensate providers who have to use the medical fee dispute process to receive their rightful reimbursement may receive 30% of the found payment due. Alan announced that hearings will be held to take testimony regarding how the rules affect the providers in order for the Commission to work through some of the unknowns. The Commission does not have the staff with the expertise to know how to deal with all of these issues, so the Commission will be dealing with this issue for many years to come. Chairman Limbaugh stated that after the hearings changes may be made to the rule before it is submitted as a pending rule. WE are putting out an RFP for a consultant to aid the commission in establishing the rule in whole to structure hospital and drug reimbursement and to keep it updated annually. The penalty rule will be based on may not shall. Chairman Limbaugh reminded everyone that this rule is just a draft and the Commission may make changes before it becomes a pending rule. Discussion was held regarding the proposed rule and the reason the Commission changed some of the conversion factors, and the difficulties and complexities of hospital charges that may penalize payors. Steve Millard may assist the commission by cost to charge ratios. The commission will take a look at any case that is presented for a 30% penalty.

Mindy – workers comp seminar, October 18<sup>th</sup> invite all of you to attend. Please register early as we had to turn people away last year.

Legislative auditors stated earlier the Commission needed to watch our free fund balance. We had about 6-6.5 million balance and wanted a trigger effect mechanism and sureties would oppose an automatic increase. Limbaugh met with Cameron and Bell and at the end of fiscal year had approx 8 mm dollar balance. We are about 70% of appropriation and they felt legislation was not necessary and feel the numbers are okay. Thinks should leave alone to see what goes on with uninsured empl fund a dn med fee stuff.

72-713

date of next meeting – November 14<sup>th</sup>

Commission thanked Bob for his service and